IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Criminal Appellate Jurisdiction

Criminal Application No. 1059 of 2007

Fardeen Feroz Khan ..Applicant

vs.

1. Narcotic Control Bureau
and another ..Respondents

Shri V.R.Manohar, Sr.Counsel with Shri Ayyaz Khan for applicant.
Smt. P.H.Kantharia, A.P.P. for respondents.

CORAM:S.C.DHARMADHIKARI J.
4th May 2007

P.C.

1. Heard Shri Manohar, Sr.Counsel for the applicant/original accused no.2 and Smt.Kantharia appearing for the respondents.

2. The order under challenge is dated 5th June, 2006 which has been delivered in Misc.Application No.78 of 2006 in N.D.P.S.Special Case No.97 of 2001. The learned Special Judge was considering the application made by the original accused no.2 praying for the following reliefs:

> "(a) Direct the prosecution to amend the complaint and charge the applicant under appropriate Section and Sub Section of the N.D.P.S.Act;

(b) That this Hon’ble Court frame charges against the applicant and charge the applicant under appropriate sections along with Sub Section.

(c) Grant such relief as the nature and circumstances of the case may merit."

3. The learned Special Judge proceeded to reject this application by the impugned order.

4. After this matter was argued at some length, Shri Manohar states that he does not want to press the relief that has been claimed in Misc.Application No.78 of 2006, namely, the amendment of the complaint.

5. However, he states that prayer clause (b) in that application is for seeking a direction from the Court to frame charges against this accused under appropriate section and sub-sections of N.D.P.S.Act, 1985. In his submission, such a relief is innocuous and even if the prayer to amend the complaint is rejected the learned Special Judge could have clarified that the charges will be framed in accordance with law and on the basis of the materials which were produced by the prosecution. The learned Special Judge has observed that atleast some of them cannot be considered at the stage at which the matter is and can be considered only at the trial. In his

submission, upon plain reading of sections 209 and 227 of the Code of Criminal Procedure, the material produced by the prosecution and forming part of the record of the case has to be considered for framing the charges or discharging the accused. Therefore, while maintaining the order passed by the learned Special Judge, appropriate clarification be issued by this Court so that the learned Special Judge while framing the charges is not influenced by the observations made in the impugned order.

6. The learned Public Prosecutor does not oppose such clarification being issued but her submission is that what material should be considered be best left to the learned Special Judge and this Court should not make any observations while clarifying the matter.

7. After having perused the application preferred by the applicant/original accused no.2 and the impugned order, in my view, in the light of the submissions made by Shri Manohar that the applicant does not press for the relief of amendment of the complaint, nothing further needs be observed.

8. As far as further request that the charge should be framed in accordance with law and considering all the materials produced by the prosecution, I see no reason for issuing such clarification because the duty of framing the

charges has to be performed in accordance with law. At that stage, he is bound to consider the materials and documents that are produced by the prosecution. All that needs to be observed is that the learned Special judge should not be influenced by any observations made by him in the impugned order but should frame the charges and try the special case in accordance with law.

9. In the light of the observations made it is not necessary to make any reference to the decisions cited at the bar.

10. Application is dismissed with the above observations.

(S.C.DHARMADHIKARI J.)